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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.117 OF 2002

Baburao Yellappa Chougule)
Age 51 yrs., Occ.: Labour)
R/o.Bharat Ratna Indira Nagar)
Solapur.).. APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT

Mr.D.G. Khamkar for the Appellant.

Dr.F.R. Shaikh, Additional Public Prosecutor,
for the Respondent.

**CORAM: V.G. PALSHIKAR, Acg. C.J. &
SMT.NISHITA MHATRE, J.**

DATED: 15TH SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. The Appeal is directed against the judgment and order of the 4th Additional Sessions Judge, Solapur in Sessions Case No.155 of 2001. By this judgment, the Sessions Court has convicted the Appellant for an offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay an amount of Rs.2,000/- as fine.

2. On 8th May 2001, Jijabai, the victim, sustained 60% burn injuries when the Appellant intentionally set her on fire with a lighted match stick. The Appellant was arrested after she succumbed to her injuries on 15th May 2001 while in hospital. He was charged for having murdered his wife and his trial was committed to

Sessions.

3. The prosecution has examined six witnesses in order to prove its case against the Appellant. There are two dying declarations which the prosecution has relied on which in all material particulars are similar. There is no contradiction or material omission between the two dying declarations. PW1 is the Special Executive Magistrate who has recorded the dying declaration of the victim on 8th May 2001, soon after she was burnt. He has meticulously followed all the required procedure for recording the dying declaration. The Doctor who was on duty informed him that the victim was in a position to orally narrate the incident. This Doctor has been examined as PW2. The victim has stated that the Appellant who was her second husband worked as a mason. He had come home at dawn in an inebriated condition. The victim was cooking at that point of time. The Appellant directed her not to attend work on that day. She was beaten by the Appellant and then the Appellant threw a lighted match stick on her saree. He then ran away from the house. The victim has further stated that thereafter her cousin, Vilas doused the flames with water and wrapped a quilt around her. She has stated that her cousin then put her in a rickshaw and took her to the Civil Hospital for treatment.

4. The victim has left another dying declaration of

the same date which is more in detail. This statement was recorded by PW5, the Assistant Police Inspector attached to Jail Road Police Station. He has recorded the statement after verifying from the Medical Officer incharge of the patient that she was in a mentally fit state to have her statement recorded. On a perusal of both these dying declarations, we find that there are no contradictions at all. The statement recorded by PW5 is more in detail as compared to the one recorded by PW1. In our opinion, therefore, the learned trial Judge has rightly accepted these statements of the victim and has convicted the Appellant.

5. The learned Counsel appearing for the Appellant places reliance on the statement of PW4 i.e. the daughter of the victim and the Appellant. This witness has disowned her statement recorded by the police. She has been declared hostile and, therefore, no reliance can be placed on this evidence of PW4. The learned Judge has rightly discarded her evidence.

6. PW3 is the Medical Officer who conducted the post mortem examination on the victim. He has proved the post mortem report and has opined that the cause of death is "Shock and toxaemia due to 60% infected burns".

7. The learned Counsel appearing for the Appellant then pointed out that the Appellant had sustained burns and this was because he was trying to save the victim.

He submits that if at all the Appellant had set the victim on fire, he had no intention to kill her and therefore the conviction should be under Section 304 Part II of the Indian Penal Code and not under Section 302 of the Indian Penal Code. He places reliance on the judgments of the Apex Court in the case of *Hari Shankar* vs. *State of Rajasthan*, **1999 CRI.L.J. 2902** and *Sree Vijayakumar* vs. *State by Inspector of Police*, **2005 CRI.L.J. 3085**.

8. We have considered the evidence of PW6, the Doctor who examined the victim. This witness has stated that the Appellant sustained 3% superficial burns over his left forearm and hand laterally. We have no manner of doubt that these burns have not been sustained by the Appellant because he tried to extinguish the fire. The Doctor PW6 has opined that the injury sustained by the Appellant was possible in the event that part of the body had come in contact with any hot substance. Undisputedly, the Appellant was close to the victim when he set her on fire. He was obviously singed when the flames engulfed the victim. Therefore, the submission of the learned Counsel for the Appellant that he be treated leniently since he had tried to douse the fire cannot be accepted.

9. The reliance placed by the learned Counsel for the Appellant on the aforesaid judgments is also of no avail to the Appellant. In the case of *Hari Shankar*

(supra), two persons had an altercation when the deceased in that case had demanded that the Appellant return his money. Incensed by the demand, the Appellant threw a burning kerosene stove on the deceased. The kerosene from the stove spilled over the clothes of the deceased and when the burning stove came in contact with the clothes, they caught fire. The Supreme Court has held that this was merely a rash and negligent act on the part of the Appellant. The Court convicted the Appellant under Section 304 Part II of the Indian Penal Code. In the second case cited before us, the facts were totally different from the facts in the present case. A dispute had arisen between the accused in that case and the victim due to which there were ill-feelings between the members of the two families. The deceased was first abused by the Appellant and then one of them hit the victim with a bottle which had some liquid in it. This liquid spread all over the body of the victim. While two of the accused held the deceased, one of the accused threw a lighted kerosene lamp on to the deceased. The Apex Court held that these were separate incidents and it was a random act resorted by the accused on the spur of the moment apparently to cause harm to the deceased. It was not a pre-planned act done with the definite intention of causing death. Hurling a small burning lamp towards a person may not definitely cause fire to the clothes. It was a dangerous act, according to the Court, but it may or may not ignite a fire.

10. We need not be detained by these judgments of the Apex Court. The facts in the present case are totally different. The Appellant and the victim were married. They had two children. The victim had another child, PW4, from her first marriage. The manner in which the Appellant had thrown a lighted match stick on the deceased who was wearing a polyester saree, indicates that it was a pre-meditated act. There was no grave or sudden provocation which would lead to the Appellant having reason to give vent to his feelings in such a heinous manner.

11. In our opinion, the trial Court has considered the entire evidence on record and has drawn proper inferences. We have with the help of the learned Counsel for the Appellant and the learned Additional Public Prosecutor considered the entire evidence afresh and reappreciated the same. We find that we are unable to disagree with the learned trial Judge.

12. The conviction of the Appellant and the sentence imposed are, therefore, are confirmed. Appeal dismissed.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)